

APPENDIX D TO DIR COTNRACT NO. DIR-TSO-3449

EIX SYSTEMS SOFTWARE AS A SERVICE AGREEMENT

This agreement ("Agreement") is entered into, to be effective as of [Effective Date] ("Effective Date"), by and between **[SUBSCRIBER NAME]** located at [Subscriber Address] ("Subscriber") and **EIX Systems** located at 600 Round Rock West Drive, Suite 204 Round Rock, TX 78681 ("Service Provider").

RECITALS

WHEREAS, Subscriber requires third-party hosted "software as a service" (the "Services," as further described herein) with respect to certain of its information technology needs;

WHEREAS, Subscriber requested a proposal from Service Provider for such Services;

WHEREAS, Service Provider has experience and expertise in the business of providing the Services;

WHEREAS, Service Provider submitted a proposal to Subscriber to perform such Services on behalf of Subscriber;

WHEREAS, based on Service Provider's superior knowledge and experience relating to such Services, Subscriber has selected Service Provider to provide and manage the Services;

WHEREAS, Service Provider wishes to perform the Services and acknowledges that the successful performance of the Services and the security and availability of Subscriber's data ("Subscriber Data," as further described herein) are critical to the operation of Subscriber's business; and,

WHEREAS, Service Provider has agreed to provide the Services to Subscriber, all on the terms and conditions of DIR Contract No. DIR-TSO-3449 and as set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and representations set forth in this Agreement, the parties hereby agree as follows:

1. The Services. DIR Contract No. DIR-TSO-3449 and this Agreement set forth the terms and conditions under which Service Provider agrees to license to Subscriber certain hosted software and provide all other services necessary for productive use of such software including customization / integration, user identification and password change management, data import / export, monitoring, technical support, maintenance, training, backup and recovery, and change management (the "Services") as further set forth on an Exhibit A (sequentially numbered) in the form of the Exhibit A attached hereto or in other statements of services containing substantially similar information and identified as an Exhibit A. The Agreement shall remain in effect unless terminated in accordance to Appendix A, Section 11. B. of DIR Contract No. DIR-TSO-3449.
 - 1.1 Authorized Users; Authorized Uses. Unless otherwise limited on an Exhibit A, Service Provider grants Subscriber a renewable, irrevocable (unless as provided for herein), nonexclusive, royalty-free, and worldwide right for any Subscriber employee, contractor, or agent, or any other individual or entity authorized by Subscriber, (each, an "Authorized User") to access and use the Services. Other than those limitations expressly described in an Exhibit A, Authorized Users will have no other limitations on their access or use of the Services.
 - 1.2 Acknowledgement of License Grant. For the purposes of 11 U.S.C. § 365(n), the parties acknowledge and agree that this Agreement constitutes a license grant of intellectual property in software form to Subscriber by Service Provider.
 - 1.3 Changes in Number of Authorized Users. The Services are provided on a tiered basis, such tiers as further described in an Exhibit A. Subscriber agrees to license the initial number of Authorized

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Users described in such Exhibit A (the "Minimum Commitment"). Subscriber is entitled to increase or decrease the number of Authorized Users on an as-requested basis; provided, however, that Subscriber shall maintain the Minimum Commitment unless the parties otherwise agree to adjust the Minimum Commitment. Should Subscriber elect to change the number of Authorized Users, Service Provider shall reduce or increase Authorized Users to the corresponding tier described in the Exhibit A and adjust the prospective Services Fees accordingly no later than five (5) business days from Subscriber's written request.

- 1.4 Control and Location of Services. The method and means of providing the Services shall be under the exclusive control, management, and supervision of Service Provider, giving due consideration to the requests of Subscriber. Except as otherwise specified in an Exhibit A, the Services (including data storage), shall be provided solely from within the continental United States and on computing and data storage devices residing therein.
 - 1.4.1 Subcontractors. Service Provider shall not enter into any subcontracts for the performance of the Services, or assign or transfer any of its rights or obligations under this Agreement, without Subscriber's prior written consent and any attempt to do so shall be void and without further effect and shall be a material breach of this Agreement. Service Provider's use of subcontractors shall not relieve Service Provider of any of its duties or obligations under this Agreement.
 - 1.4.2 Offensive or Disparaging Content. Where the Services or any web services affiliated with the Services contain offensive content or portray Subscriber in a disparaging way, either as solely determined by Subscriber, Service Provider shall immediately remove the offensive or disparaging content and Subscriber shall have the right, at Subscriber's sole election, to: (a) immediately terminate this Agreement or any Exhibit A corresponding to the offending or disparaging content and be entitled to a return of any prepaid fees; or, (b) obtain or retain, as the case may be, all fees paid or payable for the entire period of the then-current term associated with any Exhibit A corresponding to the offending or disparaging content.
2. Storage. The Services shall include the applicable allocation of base data storage described in an Exhibit A. Service Provider shall immediately notify Subscriber when Subscriber has reached eighty percent (80%) of Subscriber's then-current data storage maximum. Within five (5) calendar days of Subscriber's request, Service Provider shall make additional data storage available to Subscriber at the rates described in the Exhibit A and in accordance to Appendix C of DIR Contract No. DIR-TSO-3449.
 - 2.1 Development and Test Environments. In addition to production use of the Services, Subscriber is entitled to one development and one test environment for use by Authorized Users at no additional charge. Such non-production environments shall have the same data storage and processing capacities as the production environment. Service Provider shall cooperate with Subscriber's requests in managing the non-production environments such as refreshing Subscriber Data upon request.
 - 2.2 Documentation. The documentation for the Services (the "Documentation") will accurately and completely describe the functions and features of the Services, including all subsequent revisions thereto. The Documentation shall be understandable by a typical end user and shall provide Authorized Users with sufficient instruction such that an Authorized User can become self-reliant with respect to access and use of the Services. Subscriber shall have the right to make any number of additional copies of the Documentation at no additional charge.
 - 2.3 Changes in Functionality. During the term of an Exhibit A, Service Provider shall not reduce or eliminate functionality in the Services. Where Service Provider has reduced or eliminated functionality in the Services, Subscriber, at Subscriber's sole election and in Subscriber's sole determination, shall: (a) have, in addition to any other rights and remedies under this Agreement or at law, the right to immediately terminate this Agreement or the Exhibit A and be entitled to a

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return of any prepaid fees; or, (b) determine the value of the reduced or eliminated functionality and Service Provider will immediately adjust the Services Fees accordingly on a prospective basis. Where Service Provider has introduced like functionality in other services, Subscriber shall have an additional license and subscription right to use and access the new services, at no additional charge, with the same rights, obligations, and limitations as for the Services. Where Service Provider increases functionality in the Services, such functionality shall be provided to Subscriber without any increase in the Services Fees.

- 2.4 No Effect of Click-Through Terms and Conditions. Where an Authorized User is required to “click through” or otherwise accept or made subject to any online terms and conditions in accessing or using the Services, such terms and conditions are not binding and shall have no force or effect as to the Services, this Agreement, or the applicable Exhibit A.

3. Service Levels.

- 3.1 Service Levels; Time is of the Essence. For the term of an Exhibit A, Service Provider shall provide the Services, force majeure events excepted, during the applicable Service Windows and in accordance with the applicable Service Level Standards, each as described in the Exhibit A, time being of the essence.
- 3.2 Service Level Reporting. On a monthly basis, in arrears and no later than the fifteenth (15th) calendar day of the subsequent month following the reporting month, Service Provider shall provide reports to Subscriber describing the performance of the Services and of Service Provider as compared to the Service Level Standards; provided, however, that the Subscriber Satisfaction Survey Service Level shall be conducted by Service Provider each year on the anniversary of the Effective Date and the results shall be reported to Subscriber by Service Provider no later than the fifteenth (15th) calendar day of the subsequent month following such anniversary date. The reports shall be in a form agreed-to by Subscriber, and, in no case, contain no less than the following information: (a) actual performance compared to the Service Level Standard; (b) the cause or basis for not meeting the Service Level Standard; (c) the specific remedial actions Service Provider has undertaken or will undertake to ensure that the Service Level Standard will be subsequently achieved; and, (d) any Performance Credit due to Subscriber. Service Provider and Subscriber will meet as often as shall be reasonably requested by Subscriber, but no less than monthly, to review the performance of Service Provider as it relates to the Service Levels. Where Service Provider fails to provide a report for a Service Level in the applicable timeframe, the Service Level shall be deemed to be completely failed for the purposes of calculating a Performance Credit. Service Provider shall, without charge, make Subscriber’s historical Service Level reports to Subscriber upon request.
- 3.3 Failure to Meet Service Level Standards. As further described in an Exhibit A, in the event Service Provider does not meet a Service Level Standard, Service Provider shall: (a) owe to Subscriber any applicable Performance Credit; and, (b) use its best efforts to ensure that any unmet Service Level Standard is subsequently met. Notwithstanding the foregoing, Service Provider will use its best efforts to minimize the impact or duration of any outage, interruption, or degradation of Service. In no case shall Subscriber be required to notify Service Provider that a Performance Credit is due as a condition of payment of the same.
- 3.3.1 Termination for Material and Repeated Failures. Subscriber shall have, in addition to any other rights and remedies under this Agreement or at law, the right to immediately terminate this Agreement or an Exhibit A, and be entitled to a return of any prepaid fees where Service Provider fails to meet any Service Level Standard: (a) to such an extent that the Subscriber’s ability, as solely determined by Subscriber, to use the Services is materially disrupted, force majeure events excepted; or, (b) for four (4) months out of any twelve (12) month period.

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- 3.4 Audit of Service Levels. Subscriber or Subscriber's agent shall have the right to audit Service Provider's books, records, and measurement and auditing tools to verify Service Level Standard achievement and to determine correct payment of any Performance Credit. Where it is determined that any Performance Credit was due to Subscriber but not paid, Service Provider shall immediately owe to Subscriber the applicable Performance Credit.

4. Support; Maintenance; Additional Services.

- 4.1 Technical Support. Service Provider shall provide the Technical Support described in an Exhibit A. The Services Fees shall be inclusive of the fees for the Technical Support.

- 4.2 Maintenance. Service Provider shall provide bug fixes, corrections, modifications, enhancements, upgrades, and new releases to the Services to ensure: (a) the functionality of the Services, as described in the Documentation, is available to Authorized Users; (b) the functionality of the Services in accordance with the representations and warranties set forth herein, including but not limited to, the Services conforming in all material respects to the specifications, functions, descriptions, standards, and criteria set forth in the applicable Exhibit A and the Documentation; (c) the Service Level Standards can be achieved; and, (d) the Services work with the then-current version and the three prior versions of Internet Explorer, Mozilla Firefox, and Google Chrome Internet browsers. The Services Fees shall be inclusive of the fees for maintenance.

- 4.2.1 Required Notice of Maintenance. Unless as otherwise agreed to by Subscriber on a case-by-case basis, Service Provider shall provide no less than thirty (30) calendar day's prior written notice to Subscriber of all non-emergency maintenance to be performed on the Services, such written notice including a detailed description of all maintenance to be performed. For emergency maintenance, Service Provider shall provide as much prior notice as commercially practicable to Subscriber and shall provide a detailed description of all maintenance performed no greater than one (1) calendar day following the implementation of the emergency maintenance.

- 4.2.2 Acceptance of Non-Emergency Maintenance. Unless as otherwise agreed to by Subscriber on a case-by-case basis, for non-emergency maintenance, Subscriber shall have a ten (10) business day period to test any maintenance changes prior to Service Provider introducing such maintenance changes into production (the "Maintenance Acceptance Period"). In the event that Subscriber rejects, for good cause, any maintenance changes during the Maintenance Acceptance Period, Service Provider shall not introduce such rejected maintenance changes into production. At the end of the Maintenance Acceptance Period, if Subscriber has not rejected the maintenance changes, the maintenance changes shall be deemed to be accepted by Subscriber and Service Provider shall be entitled to introduce the maintenance changes into production.

- 4.3 Customization / Integration Services. Service Provider shall provide the Customization / Integration Services, if any, described in an Exhibit A. The Services Fees shall be inclusive of the fees for the Customization / Integration Services.

- 4.4 Training Services. Service Provider shall provide the Training Services, if any, described in an Exhibit A. The Services Fees shall be inclusive of the fees for the Training Services.

5. Escrow Agreement. At no additional cost to Subscriber, Service Provider agrees to place in escrow with an escrow agent copies of the most current version of the source and object code for the applicable software that is included as a part of the Services as well as all necessary components to ensure proper function of such software including but not limited to any application program interfaces, configuration files, schematics of software components, build instructions, procedural instructions, and other documentation (collectively,

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the “Software”). The Software shall also include all updates, improvements, and enhancements thereof from time to time developed by Service Provider and which are necessary to internally support the Services for the benefit of Subscriber. Service Provider agrees that upon the occurrence of any event or circumstance which demonstrates with reasonable certainty the inability or unwillingness of Service Provider to fulfill its obligations to Subscriber in providing the Services, as determined solely by Subscriber, Subscriber shall be entitled to obtain the then-current Software from the escrow agent. At the sole election of Subscriber, Subscriber shall have the right to: (a) perform, at Subscriber’s cost and no more than annually, via a third-party escrow verification service that is independent of Service Provider and the escrow agent, a verification of Service Provider’s compliance with its escrow obligations hereunder including but not limited to a full usability test of the Software; (b) obtain, at no additional cost to Subscriber and no more than annually, the full usability test results of the Software, such test as performed by a third-party contracted by Service Provider; and, (c) contract with, at Subscriber’s cost, a third-party that is independent of Service Provider to perform services relating to the backup and recovery of the Services and / or Subscriber Data. Service Provider agrees to reasonably cooperate with all third-parties contracted by Subscriber for purposes of this provision. Where Subscriber determines, in Subscriber’s sole determination, that Service Provider has failed to fulfill its escrow obligations, Subscriber shall, at Subscriber’s sole election: (a) have, in addition to any other rights and remedies under this Agreement or at law, the right to immediately terminate this Agreement or the applicable Exhibit A and be entitled to a return of any prepaid fees.

6. Audit Rights of Service Provider. Service Provider shall have no right to conduct an on-premises audit of Subscriber’s compliance with the use of the Services. No more than once annually, Service Provider shall have the right to request from Subscriber its certification of compliance with the permitted number of Authorized Users for an Exhibit A. Where the actual number of users exceeds the permitted number of Authorized Users, Subscriber shall, within thirty (30) business days: (a) reduce the actual number of users so as to be in compliance with the permitted number of Authorized Users in which case no additional Services Fees shall be due to Service Provider; or, (b) acquire the appropriate number of Authorized Users at the rate specified in the Exhibit A and in accordance to Appendix C of DIR Contract No. DIR-TSO-3449, so as to be in compliance with the permitted number of Authorized Users.
7. Change Control Procedure. Subscriber may, upon written notice, request changes to the scope of the Services under an Exhibit A. If Subscriber requests an increase in the scope, Subscriber shall notify Service Provider, and, not more than five (5) business days (or other mutually agreed upon period) after receiving the request, Service Provider shall notify Subscriber whether or not the change has an associated cost impact. If Subscriber approves, Subscriber shall issue a change control, which will be executed by the Service Provider. Subscriber shall have the right to decrease the scope and the associated fees for an Exhibit A and in accordance with Appendix C of DIR Contract No. DIR-TSO-3449 will be reduced accordingly.
8. Term and Termination; Renewals.
 - 8.1 Term. This Agreement is legally binding as of the Effective Date and shall continue until terminated. Unless this Agreement or an Exhibit A is terminated earlier in accordance with Appendix A, Section 11. B. of DIR Contract No. DIR-TSO-3449, the term of an Exhibit A (the “Initial Term”) shall commence on the Start Date and continue until the End Date. Following the Initial Term and unless otherwise terminated, an Exhibit A may be renewed for successive one (1) year terms (each, a “Renewal Term”) until such time as customer provides vendor with written notice of termination; provided, however, that: (a) such notice be given no fewer than thirty (30) calendar days prior to the last day of the then-current term; and, (b) any such termination shall be effective as of the date that would have been the first day of the next Renewal Term.

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- 8.2 Termination for Convenience. Termination for Convenience will be handled in accordance to Appendix A, Section 11. B. 3) of DIR Contract No. DIR-TSO-3449.
- 8.3 Termination for Cause. Termination for Cause will be handled in accordance to Appendix A, Section 11. B. 4) of DIR Contract No. DIR-TSO-3449.
- 8.4 Payments upon Termination. Upon the termination of this Agreement or an Exhibit A, Subscriber shall pay to Service Provider all undisputed amounts due and payable hereunder, if any, and Service Provider shall pay to Subscriber all amounts due and payable hereunder, such as Performance Credits and prepaid fees, if any.
- 8.5 Return of Subscriber Data. Upon the termination of this Agreement or an Exhibit A, Service Provider shall, within one (1) business day following the termination of this Agreement or an Exhibit A, provide Subscriber, without charge and without any conditions or contingencies whatsoever (including but not limited to the payment of any fees due to Service Provider), with a final extract of the Subscriber Data in the format specified by Subscriber. Further, Service Provider shall certify to Subscriber the destruction of any Subscriber Data within the possession or control of Service Provider but such destruction shall occur only after the Subscriber Data has been returned to Subscriber. This Section shall survive the termination of this Agreement.
9. Transition Services. Provided that this Agreement or an Exhibit A has not been terminated by Service Provider due to Subscriber's failure to pay any undisputed amount due Service Provider, Service Provider will provide to Subscriber and / or to the service provider selected by Subscriber (such service provider shall be known as the "Successor Service Provider") assistance reasonably requested by Subscriber to effect the orderly transition of the Services, in whole or in part, to Subscriber or to Successor Service Provider (such assistance shall be known as the "Transition Services") following the termination of this Agreement or an Exhibit A, in whole or in part. The Transition Services shall be provided on a time and materials basis and may include: (a) developing a plan for the orderly transition of the terminated Services from Service Provider to Subscriber or Successor Service Provider; (b) if required, transferring the Subscriber Data to Successor Service Provider; (c) using commercially reasonable efforts to assist Subscriber in acquiring any necessary rights to legally and physically access and use any third-party technologies and documentation then being used by Service Provider in connection with the Services; (d) using commercially reasonable efforts to make available to Subscriber, pursuant to mutually agreeable terms and conditions, any third-party services then being used by Service Provider in connection with the Services; and, (e) such other activities upon which the parties may agree. Notwithstanding the foregoing, should Subscriber terminate this Agreement or an Exhibit A due to Service Provider's material breach, Subscriber may elect to use the Services for a period of no greater than six (6) months from the date of termination at a reduced rate of twenty (20%) percent off of the then-current Services Fees for the terminated Services. All applicable terms and conditions of DIR Contract No. DIR-TSO-3449 and this Agreement shall apply to the Transition Services. This Section shall survive the termination of this Agreement.
10. Fees; Billing. Subscriber shall be responsible for and shall pay to Service Provider the fees as further described in an Exhibit A, subject to the terms and conditions of Appendix A, Section 8. J. of DIR Contract No. DIR-TSO-3449.
- 10.1 Billing Procedures. Unless otherwise provided for under an Exhibit A, Service Provider shall bill to Subscriber the sums due pursuant to an Exhibit A by Service Provider's invoice, which shall contain: (a) Subscriber's purchase order number, if any, and Service Provider's invoice number; (b) description of Services for which an amount is due; (c) the fees or portion thereof that are due; (d); any Performance Credits or other credits; and, (e) total amount due. Service Provider shall forward invoices in hardcopy format to [Subscriber Accounts Payable Address].

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- 10.2 Taxes. Taxes will be handled in accordance to Appendix A, Section 8. E. of DIR Contract No. DIR-TSO-3449.
- 10.3 Credits. Any amounts due to Subscriber, such as a Performance Credit, from Service Provider may be applied by Subscriber, at the sole election of Subscriber, against any current or future fees due to Service Provider. Any such amounts that are not so applied by Subscriber shall be paid to Subscriber by Service Provider within thirty (30) calendar days following Subscriber's request. This Section shall survive the termination of this Agreement.
- 10.4 Non-binding Terms. Any terms and conditions included in a Subscriber purchase order or a Service Provider invoice, as the case may be, shall be deemed to be solely for the convenience of the respective party, and no such term or condition shall be binding upon the parties.
- 10.5 Auditable Records. Service Provider shall maintain accurate records of all fees billable to, and payments made by, Subscriber in a format that will permit audit by Subscriber for a period of no less than seven (7) years from when a fee was incurred or a payment was made. The foregoing obligation of Service Provider shall survive the termination of this Agreement. For the term of this Agreement, upon Subscriber's written request, Service Provider shall provide Subscriber with a copy of its annual American Institute of Certified Public Accountants Service Organization Control (SOC) 1 type 2 report and SOC 2 type 2 report (for all Trust Services Principles).
- 10.6 Billing Reviews by Third-Parties. For purposes of determining the competitiveness and appropriateness of fees charged to Subscriber by Service Provider, Subscriber is entitled to disclose to a third-party this Agreement, any Exhibit A, and any other data pertaining to fees paid or payable by Subscriber to Service Provider.
- 10.7 No Suspension of Services. Service Provider shall not suspend any part of the Services where: (a) Subscriber is reasonably disputing any amount due to Service Provider; or, (b) any unpaid but undisputed amount due to Service Provider is less than ninety (90) business days in arrears.

11. Representations and Warranties.

- 11.1 Mutual. Each of Subscriber and Service Provider represent and warrant that:
- 11.1.1 it has all requisite corporate power, financial capacity, and authority to execute, deliver, and perform its obligations under this Agreement;
 - 11.1.2 the execution, delivery, and performance of this Agreement has been duly authorized by it and this Agreement constitutes the legal, valid, and binding agreement of it and is enforceable against it in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganizations, moratoriums, and similar laws affecting creditors' rights generally and by general equitable principles;
 - 11.1.3 it shall comply with all applicable federal, state, local, or other laws and regulations applicable to the performance by it of its obligations under this Agreement and shall obtain all applicable permits and licenses required of it in connection with its obligations under this Agreement; and,
 - 11.1.4 there is no outstanding litigation, arbitrated matter or other dispute to which it is a party which, if decided unfavorably to it, would reasonably be expected to have a potential or actual material adverse effect on its ability to fulfill its obligations under this Agreement.
- 11.2 By Service Provider. Service Provider represents and warrants that:

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- 11.2.1 it is in the business of providing the Services;
- 11.2.2 the Services are fit for the ordinary purposes for which they will be used;
- 11.2.3 it is possessed of superior knowledge with respect to the Services;
- 11.2.4 it acknowledges that Subscriber is relying on its representation of its experience and expert knowledge, and that any substantial misrepresentation may result in damage to Subscriber;
- 11.2.5 it knows the particular purpose for which the Services are required by Subscriber;
- 11.2.6 it is the lawful licensee or owner of the Services (excluding any Subscriber Data therein) and has all the necessary rights in the Services to grant the use of the Services to Subscriber;
- 11.2.7 the Services and any other work performed by Service Provider hereunder shall not infringe upon any United States or foreign copyright, patent, trade secret, or other proprietary right, or misappropriate any trade secret, of any third-party, and that it has neither assigned nor otherwise entered into an agreement by which it purports to assign or transfer any right, title, or interest to any technology or intellectual property right that would conflict with its obligations under this Agreement;
- 11.2.8 it shall disclose any third-party (which shall, for purposes of this Agreement, be deemed a subcontractor) whose intellectual property is incorporated into the Services or who is necessary for the performance of the Services and it shall maintain in-force written agreements with such third-party, if any, for the term of the applicable Exhibit A;
- 11.2.9 it has the expertise to perform the Services in a competent, workmanlike, and professional manner and in accordance with the highest professional standards;
- 11.2.10 it will use its best efforts to ensure that no computer viruses, malware, or similar items (collectively, a "Virus") are introduced into Subscriber's computing and network environment by the Services, and that, where it transfers a Virus to Subscriber through the Services, it shall reimburse Subscriber the actual cost incurred by Subscriber to remove or recover from the Virus, including the costs of persons employed by Subscriber;
- 11.2.11 the Services are free of any mechanism which may disable the Services and Service Provider warrants that no loss of Subscriber Data will result from such items if present in the Services;
- 11.2.12 in the case of Subscriber's reasonable dispute of any Service Provider invoice, it shall not withhold the performance of Services, including, without limitation, access and use of the Services, Technical Support, Maintenance, and extract of Subscriber Data; and,
- 11.2.13 the Services will conform in all material respects to the specifications, functions, descriptions, standards, and criteria set forth in the applicable Exhibit A and the Documentation.

12. Subscriber Data.

- 12.1 Ownership. Subscriber's data ("Subscriber Data," which shall also be known and treated by Service Provider as Confidential Information) shall include: (a) Subscriber's data collected, used, processed, stored, or generated as the result of the use of the Services; and, (b) personally identifiable information ("PII") collected, used, processed, stored, or generated as the result of the use of the Services, including, without limitation, any information that identifies an individual, such as an individual's social security number or other government-issued identification number, date of birth, address, telephone number, biometric data, mother's maiden name, email address, credit

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card information, or an individual's name in combination with any other of the elements listed herein. Subscriber Data is and shall remain the sole and exclusive property of Subscriber and all right, title, and interest in the same is reserved by Subscriber. This Section shall survive the termination of this Agreement.

- 12.2 Service Provider Use of Subscriber Data. Service Provider is provided a limited license to Subscriber Data for the sole and exclusive purpose of providing the Services, including a license to collect, process, store, generate, and display Subscriber Data only to the extent necessary in the providing of the Services. Service Provider shall: (a) keep and maintain Subscriber Data in strict confidence, using such degree of care as is appropriate and consistent with its obligations as further described in this Agreement and applicable law to avoid unauthorized access, use, disclosure, or loss; (b) use and disclose Subscriber Data solely and exclusively for the purpose of providing the Services, such use and disclosure being in accordance with this Agreement, the applicable Exhibit A, and applicable law; and, (c) not use, sell, rent, transfer, distribute, or otherwise disclose or make available Subscriber Data for Service Provider's own purposes or for the benefit of anyone other than Subscriber without Subscriber's prior written consent. This Section shall survive the termination of this Agreement.
- 12.3 Extraction of Subscriber Data. Service Provider shall, within one (1) business day of Subscriber's request, provide Subscriber, without charge and without any conditions or contingencies whatsoever (including but not limited to the payment of any fees due to Service Provider), an extract of the Subscriber Data in the format specified by Subscriber.
- 12.4 Backup and Recovery of Subscriber Data. As a part of the Services, Service Provider is responsible for maintaining a backup of Subscriber Data and for an orderly and timely recovery of such data in the event that the Services may be interrupted. Unless otherwise described in an Exhibit A, Service Provider shall maintain a contemporaneous backup of Subscriber Data that can be recovered within two (2) hours at any point in time. Additionally, Service Provider shall store a backup of Subscriber Data in an off-site "hardened" facility no less than daily, maintaining the security of Subscriber Data, the security requirements of which are further described herein. Any backups of Subscriber Data shall not be considered in calculating storage used by Subscriber.
- 12.5 Loss of Data. In the event of any act, error or omission, negligence, misconduct, or breach that compromises or is suspected to compromise the security, confidentiality, or integrity of Subscriber Data or the physical, technical, administrative, or organizational safeguards put in place by Service Provider that relate to the protection of the security, confidentiality, or integrity of Subscriber Data, Service Provider shall, as applicable: (a) notify Subscriber as soon as practicable but no later than twenty-four (24) hours of becoming aware of such occurrence; (b) cooperate with Subscriber in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law or as otherwise required by Subscriber; (c) in the case of PII, at Subscriber's sole election, (i) notify the affected individuals who comprise the PII as soon as practicable but no later than is required to comply with applicable law, or, in the absence of any legally required notification period, within five (5) calendar days of the occurrence; or, (ii) reimburse Subscriber for any costs in notifying the affected individuals; (d) in the case of PII, provide third-party credit and identity monitoring services to each of the affected individuals who comprise the PII for the period required to comply with applicable law, or, in the absence of any legally required monitoring services, for no less than twelve (12) months following the date of notification to such individuals; (e) perform or take any other actions required to comply with applicable law as a result of the occurrence; (f) without limiting Subscriber's obligations of indemnification as further described in this Agreement, indemnify, defend, and hold harmless Subscriber for any and all Claims (as defined herein), including reasonable attorneys' fees, costs, and expenses incidental thereto, which may be suffered by, accrued against, charged to, or recoverable from Subscriber in connection with the occurrence; (g) be responsible for recreating lost Subscriber Data in the manner and on the schedule set by Subscriber without charge to

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Subscriber; and, (h) provide to Subscriber a detailed plan within ten (10) calendar days of the occurrence describing the measures Service Provider will undertake to prevent a future occurrence. Notification to affected individuals, as described above, shall comply with applicable law, be written in plain language, and contain, at a minimum: name and contact information of Service Provider's representative; a description of the nature of the loss; a list of the types of data involved; the known or approximate date of the loss; how such loss may affect the affected individual; what steps Service Provider has taken to protect the affected individual; what steps the affected individual can take to protect himself or herself; contact information for major credit card reporting agencies; and, information regarding the credit and identity monitoring services to be provided by Service Provider. This Section shall survive the termination of this Agreement.

13. Non-Disclosure of Confidential Information. The parties acknowledge that each party may be exposed to or acquire communication or data of the other party that is confidential, privileged communication not intended to be disclosed to third parties. The provisions of this Section are subject to the parties' obligations under public information laws and lawful subpoenas, and shall survive the termination of this Agreement.
 - 13.1 Meaning of Confidential Information. To the extent allowable under the Texas Public Information Act for the purposes of this Agreement, the term "Confidential Information" shall mean all information and documentation of a party that: (a) has been marked "confidential" or with words of similar meaning, at the time of disclosure by such party; (b) if disclosed orally or not marked "confidential" or with words of similar meaning, was subsequently summarized in writing by the disclosing party and marked "confidential" or with words of similar meaning; and, (c) should reasonably be recognized as confidential information of the disclosing party. The term "Confidential Information" does not include any information or documentation that was: (a) already in the possession of the receiving party without an obligation of confidentiality; (b) developed independently by the receiving party, as demonstrated by the receiving party, without violating the disclosing party's proprietary rights; (c) obtained from a source other than the disclosing party without an obligation of confidentiality; or, (d) publicly available when received, or thereafter became publicly available (other than through any unauthorized disclosure by, through, or on behalf of, the receiving party). For purposes of this Agreement, in all cases and for all matters, Subscriber Data shall be deemed to be Confidential Information.
 - 13.2 Obligation of Confidentiality. The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a need to know in connection with this Agreement or to use such Confidential Information for any purposes whatsoever other than the performance of this Agreement. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential.
 - 13.3 Cooperation to Prevent Disclosure of Confidential Information. Each party shall use its best efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each party shall advise the other party immediately in the event either party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement.
 - 13.4 Surrender of Confidential Information upon Termination. Subject to record retention laws and policies, upon termination of this Agreement or an Exhibit A, in whole or in part, each party shall, within five (5) calendar days from the date of termination, return to the other party any and all Confidential Information received from the other party, or created or received by a party on behalf of the other party, which are in such party's possession, custody, or control; provided, however, that Service Provider shall return Subscriber Data to Subscriber following the timeframe and procedure described further in this Agreement. Should Service Provider or Subscriber determine

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that the return of any non-Subscriber Data Confidential Information is not feasible, such party shall destroy the non-Subscriber Data Confidential Information and shall certify the same in writing within five (5) calendar days from the date of termination to the other party.

14. Data Privacy and Information Security.

- 14.1 Undertaking by Service Provider. Without limiting Service Provider's obligation of confidentiality as further described herein, Service Provider shall be responsible for establishing and maintaining a data privacy and information security program, including physical, technical, administrative, and organizational safeguards, that is designed to: (a) ensure the security and confidentiality of the Subscriber Data; (b) protect against any anticipated threats or hazards to the security or integrity of the Subscriber Data; (c) protect against unauthorized disclosure, access to, or use of the Subscriber Data; (d) ensure the proper disposal of Subscriber Data; and, (e) ensure that all employees, agents, and subcontractors of Service Provider, if any, comply with all of the foregoing. In no case shall the safeguards of Service Provider's data privacy and information security program be less stringent than the safeguards used by Subscriber.
- 14.2 Audit by Service Provider. No less than annually, Service Provider shall conduct a comprehensive independent third-party audit of its data privacy and information security program and provide such audit findings to Subscriber.
- 14.3 Right of Audit by Subscriber. Without limiting any other audit rights of Subscriber, Subscriber shall have the right to review Service Provider's data privacy and information security program prior to the commencement of Services and from time to time during the term of this Agreement. During the providing of the Services, on an ongoing basis from time to time and without notice, Subscriber, at its own expense, shall be entitled to perform, or to have performed, an on-site audit of Service Provider's data privacy and information security program. In lieu of an on-site audit, upon request by Subscriber, Service Provider agrees to complete, within forty-five (45) days of receipt, an audit questionnaire provided by Subscriber regarding Service Provider's data privacy and information security program.
- 14.4 Audit Findings. Service Provider shall implement any required safeguards as identified by Subscriber or by any audit of Service Provider's data privacy and information security program.
- 14.5 Subscriber's Right to Termination for Deficiencies. Subscriber reserves the right, at its sole election, to immediately terminate this Agreement or an Exhibit A without limitation and without liability if Subscriber reasonably determines that Service Provider fails or has failed to meet its obligations under this Section.

15. Proprietary Rights.

- 15.1 Pre-existing Materials. Subscriber acknowledges that, in the course of performing the Services, Service Provider may use software and related processes, instructions, methods, and techniques that have been previously developed by Service Provider (collectively, the "Pre-existing Materials," which shall include the Services) and that the same shall remain the sole and exclusive property of Service Provider.
- 15.2 No License. Except as expressly set forth herein, no license is granted by either party to the other with respect to the Confidential Information or Pre-existing Materials. Nothing in this Agreement shall be construed to grant to either party any ownership or other interest, in the Confidential Information or Pre-existing Materials, except as may be provided under a license specifically applicable to such Confidential Information or Pre-existing Materials.

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15.3 The provisions of this Section shall survive the termination of this Agreement.

16. Indemnification; Limitation of Liability; Insurance.

16.1 Indemnification will be handled in accordance to Appendix A, Section 10. A. of DIR Contract No. DIR-TSO-3449.

16.2 Limitation of Liability. Limitation of Liability will be handled in accordance to Appendix A, Section 10. K. of DIR Contract No. DIR-TSO-3449.

16.3 Insurance. Insurance will be handled in accordance to Appendix A, Section 10. N. of DIR Contract No. DIR-TSO-3449.

17. General.

17.1 Relationship between Subscriber and Service Provider. Service Provider represents and warrants that it is an independent contractor with no authority to contract for Subscriber or in any way to bind or to commit Subscriber to any agreement of any kind or to assume any liabilities of any nature in the name of or on behalf of Subscriber. Under no circumstances shall Service Provider, or any of its staff, if any, hold itself out as or be considered an agent employee, joint venture, or partner of Subscriber. In recognition of Service Provider's status as an independent contractor, Subscriber shall carry no Workers' Compensation insurance or any health or accident insurance to cover Service Provider or Service Provider's agents or staff, if any. Subscriber shall not pay any contributions to Social Security, unemployment insurance, federal or state withholding taxes, any other applicable taxes whether federal, state, or local, nor provide any other contributions or benefits which might be expected in an employer-employee relationship. Neither Service Provider nor its staff, if any, shall be eligible for, participate in, or accrue any direct or indirect benefit under any other compensation, benefit, or pension plan of Subscriber.

17.2 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of Texas. Service Provider hereby consents and submits to the exclusive forum of the state courts in Travis County, Texas. Nothing herein shall be construed to waive the sovereign immunity of the State.

17.3 Compliance with Laws; Subscriber Policies and Procedures. Both parties agree to comply with all applicable federal, state, and local laws, executive orders and regulations issued, where applicable. Service Provider shall comply with Subscriber policies and procedures where the same are posted, conveyed, or otherwise made available to Service Provider.

17.4 Cooperation. Where agreement, approval, acceptance, consent or similar action by either party hereto is required by any provision of this Agreement, such action shall not be unreasonably delayed or withheld. Each party will cooperate with the other by, among other things, making available, as reasonably requested by the other, management decisions, information, approvals, and acceptances in order that each party may properly accomplish its obligations and responsibilities hereunder. Service Provider will cooperate with any Subscriber supplier performing services, and all parties supplying hardware, software, communication services, and other services and products to Subscriber, including, without limitation, the Successor Service Provider. Service Provider agrees to cooperate with such suppliers, and shall not commit or permit any act which may interfere with the performance of services by any such supplier.

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- 17.5 Force Majeure; Excused Performance. Force Majeure will be handled in accordance to Appendix A, Section 11. C. of DIR Contract No. DIR-TSO-3449.
- 17.6 Advertising and Publicity. Service Provider shall not refer to Subscriber directly or indirectly in any advertisement, news release, or publication without prior written approval from Subscriber.
- 17.7 No Waiver. The failure of either party at any time to require performance by the other party of any provision of this Agreement shall in no way affect that party's right to enforce such provisions, nor shall the waiver by either party of any breach of any provision of this Agreement be taken or held to be a waiver of any further breach of the same provision.
- 17.8 Notices. Notices will be handled in accordance to Appendix A, Section 12. of DIR Contract No. DIR-TSO-3449.
- 17.9 Assignment of Agreement. Assignment will be handled in accordance to Appendix A, Section 4. D. of DIR Contract No. DIR-TSO-3449.
- 17.10 Counterparts; Facsimile. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement. The parties agree that a facsimile signature may substitute for and have the same legal effect as the original signature.
- 17.11 Entire Agreement. DIR Contract No. DIR-TSO-3449 and this Agreement and its attached exhibits constitute the entire agreement between the parties and supersede any and all previous representations, understandings, or agreements between Subscriber and Service Provider as to the subject matter hereof. This Agreement may only be amended by an instrument in writing signed by the parties. This Agreement shall be construed without regard to the party that drafted it. Any ambiguity shall not be interpreted against either party and shall, instead, be resolved in accordance with other applicable rules concerning the interpretation of contracts.
- 17.12 Cumulative Remedies. All rights and remedies of Subscriber herein shall be in addition to all other rights and remedies available at law or in equity, including, without limitation, specific performance against Service Provider for the enforcement of this Agreement, and temporary and permanent injunctive relief.

(Remainder of page intentionally left blank)

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Executed on the dates set forth below by the undersigned authorized representative of Subscriber and Service Provider to be effective as of the Effective Date.

[SUBSCRIBER NAME] (SUBSCRIBER)

By:
Name:
Title:
Date:

Address for Notice:

[SERVICE PROVIDER NAME] (SERVICE PROVIDER)

By:
Name:
Title:
Date:

Address for Notice:

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EXHIBIT A-_____

Service Provider's Software as a Service Statement of Services

This Exhibit A - Service Provider's Software as a Service Statement of Services shall be incorporated in and governed by the terms of DIR Contract No. DIR-TSO-3449 and that certain Software as a Service Agreement by and between **[SUBSCRIBER NAME]** ("Subscriber") and **[SERVICE PROVIDER NAME]** ("Service Provider") dated [Effective Date], as amended (the "Agreement"). Unless expressly provided for in this Exhibit A, in the event of a conflict between the provisions contained in DIR Contract No. DIR-TSO-3449, the Agreement and those contained in this Exhibit A, the provisions contained in DIR Contract No. DIR-TSO-3449 shall prevail.

Services Description. [Enter a detailed description of the Services that will be provided. As appropriate, documents describing the Services can be "attached hereto and incorporated herein."]

Start Date and End Date. [Indicate the Start Date and End Date of the Services. These dates represent the term of the Services. If the Services are not required until after Customization / Integration Services, Training Services, etc. are completed, be sure to indicate that the Start Date for the Services may be later than the Start Date for, for example, the Customization / Integration Services.]

Authorized Users and Services Fees. [Indicate the initial number of Authorized Users and rates. Additionally, describe "tiers" or numbers and corresponding rates to purchase additional Authorized Users. Be clear as to the type of pricing model; for example, scalable pricing, module pricing, per seat pricing, usage-based pricing. This Agreement assumes a scalable and elastic per-user pricing model. Also include the billing frequency, such as monthly, quarterly, or annually.]

Storage Threshold(s). [Describe the initial data storage provided by the Service Provider and any additional "tiers" of storage.]

Storage Fees. [Describe Storage Fees, if any, for the initial data storage provided by the Service Provider as well as for any additional "tiers" of storage. Fees will be in accordance to Appendix C of DIR Contract No. DIR-TSO-3449.]

Technical Support Description. [Modify this section as necessary.] Service Provider will provide to Subscriber telephone and email support ("Technical Support") twenty-four (24) hours per day, seven (7) days per week, three-hundred-sixty-five (365) days per year. Technical Support will include any research and resolution activity performed by Service Provider.

- a) Request for Technical Support. Authorized Users will make Technical Support requests by calling or emailing Service Provider's Technical Support staff or by submitting a request via Service Provider's customer service web portal. The Technical Support staff shall assign to the request the Problem Severity Level (as defined herein) indicated by the requestor.
- b) Problem Severity Levels 1 and 2 Response and Resolution. For Technical Support requests not made by telephone, within the Request Response Time of such a request, Service Provider shall confirm to the requestor receipt of the request by Service Provider. If a Problem Severity Level 1 or 2 request cannot be corrected to the reasonable satisfaction of the requestor within the Request Resolution Time after the requestor makes the initial request for Technical Support, Service Provider will: (a) immediately escalate the request to Service Provider's management; (b) take and continue to take the actions which will most expeditiously resolve the request; (c) provide a hourly report to the requestor of the steps taken and to be taken to resolve the request, the progress to correct, and the estimated time of correction until the request is resolved; and, (d) every [Time Duration], provide increasing levels of technical expertise and Service Provider management involvement in finding a solution to the request until it has been resolved.
- c) Problem Severity Levels 3 and 4 Response and Resolution. For Technical Support requests not made by telephone, within the Request Response Time of such a request, Service Provider shall confirm to the requestor receipt of the request by Service Provider. If a Problem Severity Level 3 or 4 request cannot be

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corrected to the reasonable satisfaction of the requestor within the Request Resolution Time after the requestor makes the initial request for Technical Support, at the sole election of requestor: (a) Service Provider will work continuously to resolve the request; or, (b) requestor and Service Provider will mutually agree upon a schedule within which to resolve the request.

Technical Support Problem Severity Levels

a) Problem Severity Level 1.

- 1) Description. This Problem Severity Level is associated with: (a) Services, as a whole, are non-functional or are not accessible; (b) unauthorized exposure of all or part of Subscriber Data; or, (c) loss or corruption of all or part of Subscriber Data.
- 2) Request Response Time. 30 minutes.
- 3) Request Resolution Time. 2 hours.

b) Problem Severity Level 2.

- 1) Description. This Problem Severity Level is associated with significant and / or ongoing interruption of an Authorized User's use of a critical function (as determined by the Authorized User) of the Services and for which no acceptable (as determined by the Authorized User) work-around is available.
- 2) Request Response Time. 1 hour.
- 3) Request Resolution Time. 4 hours.

c) Problem Severity Level 3.

- 1) Description. This Problem Severity Level is associated with: (a) minor and / or limited interruption of an Authorized User's use of a non-critical function (as determined by the Authorized User) of the Services; or, (b) problems which are not included in Problem Severity Levels 1 or 2.
- 2) Request Response Time. 8 hours.
- 3) Request Resolution Time. 24 hours.

d) Problem Severity Level 4.

- 1) Description. This Problem Severity Level is associated with: (a) general questions pertaining to the Services; or, (b) problems which are not included in Problem Severity Levels 1, 2, or 3.
- 2) Request Response Time. 8 hours.
- 3) Request Resolution Time. 48 hours.

Customization / Integration Services. [Describe all Customization / Integration Services, if any, to be provided by the Service Provider to enable production use of the Services.]

Training Services. [Describe all Training Services, if any, to be provided by the Service Provider. Include any type of training or method of delivery, including documentation or other materials, web- or computer-based, instructor-led, train-the-trainer, etc.]

Service Levels.

a) Availability Service Level.

1) Definitions.

- (a) "Actual Uptime" shall mean the total minutes in the reporting month that the Services were actually available to Authorized Users for normal use.

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- (b) "Maintenance Window" shall mean the total minutes in the reporting month represented by the following day(s) and time(s) during which Service Provider shall maintain the Services: [Day(s) and Time(s)].
- (c) "Scheduled Downtime" shall mean the total minutes in the reporting month represented by the Maintenance Window.
- (d) "Scheduled Uptime" shall mean the total minutes in the reporting month less the total minutes represented by the Scheduled Downtime.
- 2) Service Level Standard. Services will be available to Authorized Users for normal use 100% of the Scheduled Uptime.
- 3) Calculation. $(\text{Actual Uptime} / \text{Scheduled Uptime}) * 100 = \text{Percentage Uptime}$ (as calculated by rounding to the second decimal point)
- 4) Performance Credit.
 - (a) Where Percentage Uptime is greater than 99.98%, no Performance Credit will be due to Subscriber.
 - (b) Where Percentage Uptime is equal to or less than 99.98%, Subscriber shall be due a Performance Credit in the amount of 10% of the Services Fees (as calculated on a monthly basis for the reporting month) for each full 1% reduction in Percentage Uptime.
- 5) Example Calculation.
 - (a) Assuming reporting month is February 2012 (41,760 minutes).
 - (b) Assuming a Maintenance Window of Sundays from Midnight to 4:00 a.m. Eastern Standard Time (equals Scheduled Downtime of 960 minutes).
 - (c) Scheduled Uptime equals 40,800 minutes (total minutes of 41,760 in February 2012 less 960 minutes of Scheduled Downtime).
 - (d) Assuming Actual Uptime of 40,000 minutes. A Percentage Uptime is calculated as follows: $(40,000 / 40,800) * 100 = 98.04\%$.
 - (e) The threshold of 99.99% less the Percentage Uptime of 98.04% = 1.95%.
 - (f) The difference is greater than a 1% reduction but is less than a 2% reduction; therefore, Subscriber is due 10% of the Services Fees as a Performance Credit.
- b) Services Response Time Service Level.
 - 1) Definition(s).
 - (a) "Response Time" shall mean the interval of time from when an Authorized User requests, via the Services, a Transaction to when visual confirmation of Transaction completion is received by the Authorized User. For example, Response Time includes the period of time representing the point at which an Authorized User enters and submits data to the Services and the Services display a message to the Authorized User that the data has been saved.
 - (b) "Total Transactions" shall mean the total of Transactions occurring in the reporting month.
 - (c) "Transaction" or "Transactions" shall mean Services web page loads, Services web page displays, and Authorized User Services requests.
 - 2) Service Level Standard. Transactions will have a Response Time of 1 second or less 100% of the time each reporting month during the periods for which the Services are available.
 - 3) Calculation. $(\text{Total Transactions} - \text{Total Transactions failing Standard}) / \text{Total Transactions} * 100 = \text{Percentage Response Time}$ (as calculated by rounding to the second decimal point).
 - 4) Performance Credit.

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- (a) Where Percentage Response Time is greater than 95.00%, no Performance Credit will be due to Subscriber.
- (b) Where Percentage Response Time is equal to or less than 95.00%, Subscriber shall be due a Performance Credit in the amount of 1% of the Services Fees (as calculated on a monthly basis for the reporting month) for each full 1% reduction in Percentage Response Time.
- 5) Example Calculation.
 - (a) Total Transactions during the reporting month equal 42,078.
 - (b) Total Transactions failing the Standard of 100% equal 2,163.
 - (c) Percentage Response Time is calculated as follows: $((42,078 - 2,163) / 42,078) * 100 = 94.86\%$
 - (d) The threshold of 95.01% less the Percentage Response Time of 94.86% = .15%. The difference is less than a 1% reduction; therefore, Subscriber is not due a Performance Credit.
- c) Technical Support Problem Response Service Level.
 - 1) Definition. "Total Problems" shall mean the total of problems occurring in the reporting month.
 - 2) Service Level Standard. Problems shall be confirmed as received by Service Provider 100% of the time each reporting month, in accordance with the Request Response Time associated with the Problem Severity Level.
 - 3) Calculation. $(\text{Total Problems} - \text{Total Problems failing Standard}) / \text{Total Problems} * 100 = \text{Percentage Problem Response}$ (as calculated by rounding to the second decimal point). Note: This Calculation must be completed for each Problem Severity Level.
 - 4) Performance Credit.
 - (a) Problem Severity Level 1 – 2.
 - (1) Where Percentage Problem Response is greater than 99.00%, no Performance Credit will be due to Subscriber.
 - (2) Where Percentage Problem Response is equal to or less than 99.00%, Subscriber shall be due a Performance Credit in the amount of 1% of the Services Fees (as calculated on a monthly basis for the reporting month) for each full 1% reduction in Percentage Problem Response.
 - (b) Problem Severity Level 3 – 4.
 - (1) Where Percentage Problem Response is greater than 90.00%, no Performance Credit will be due to Subscriber.
 - (2) Where Percentage Problem Response is equal to or less than 90.00%, Subscriber shall be due a Performance Credit in the amount of .5% of the Services Fees (as calculated on a monthly basis for the reporting month) for each full 1% reduction in Percentage Problem Response.
 - 5) Example Calculation (Using Problem Severity Level 1 – 2).
 - (a) Total Problems during the reporting month equal 68.
 - (b) Total Problems failing the Standard of 100% equal 3.
 - (c) Percentage Problem Response is calculated as follows: $((68 - 3) / 68) * 100 = 95.59\%$
 - (d) The threshold of 99.01% less the Percentage Problem Response of 95.59% = 3.42%. The difference is greater than a 3% reduction but is less than a 4% reduction; therefore, Subscriber is due 3% of the Services Fees as a Performance Credit.
- d) Technical Support Problem Resolution Service Level.
 - 1) Definition. "Total Problems" shall mean the total of problems occurring in the reporting month.

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- 2) Service Level Standard. Problems shall be resolved by Service Provider 100% of the time each reporting month, in accordance with the Request Resolution Time associated with the Problem Severity Level.
- 3) Calculation. $((\text{Total Problems} - \text{Total Problems failing Standard}) / \text{Total Problems}) * 100 = \text{Percentage Problem Resolution}$ (as calculated by rounding to the second decimal point). Note: This Calculation must be completed for each Problem Severity Level.
- 4) Performance Credit.
 - (a) Problem Severity Level 1 – 2.
 - (1) Where Percentage Problem Resolution is greater than 99.00%, no Performance Credit will be due to Subscriber.
 - (2) Where Percentage Problem Resolution is equal to or less than 99.00%, Subscriber shall be due a Performance Credit in the amount of 5% of the Services Fees (as calculated on a monthly basis for the reporting month) for each full 1% reduction in Percentage Problem Resolution.
 - (b) Problem Severity Level 3 – 4.
 - (1) Where Percentage Problem Resolution is greater than 90.00%, no Performance Credit will be due to Subscriber.
 - (2) Where Percentage Problem Resolution is equal to or less than 90.00%, Subscriber shall be due a Performance Credit in the amount of 1% of the Services Fees (as calculated on a monthly basis for the reporting month) for each full 1% reduction in Percentage Problem Resolution.
- 5) Example Calculation (Using Problem Severity Level 3 – 4).
 - (a) Total Problems during the reporting month equal 17.
 - (b) Total Problems failing the Standard of 100% equal 2.
 - (c) Percentage Problem Resolution is calculated as follows: $((17 - 2) / 17) * 100 = 88.24\%$
 - (d) The threshold of 90.01% less the Percentage Problem Resolution of 88.24% = 1.77%. The difference is greater than a 1% reduction but is less than a 2% reduction; therefore, Subscriber is due 1% of the Services Fees as a Performance Credit.
- e) Subscriber Satisfaction Survey Service Level. On an annual basis, Subscriber and Service Provider shall each agree on the structure of the Subscriber satisfaction survey, including question format, question composition, number of questions, response scale (such as Likert), and method of surveying (such as telephonic). Unless otherwise agreed to in writing by Subscriber, all Authorized Users shall be solicited by Service Provide to participate in the Subscriber satisfaction survey.
 - 1) Definition. “Total Responses” shall mean the total responses from Authorized Users to the annual Subscriber satisfaction survey.
 - 2) Service Level Standard. Authorized Users as identified by Subscriber and as surveyed on an annual basis, shall be completely (100%) satisfied with the Services.
 - 3) Calculation. $(\text{Total Responses} - \text{Total Responses failing Standard}) / \text{Total Responses} * 100 = \text{Percentage Subscriber Satisfaction}$ (as calculated by rounding to the second decimal point).
 - 4) Performance Credit.
 - (a) Where Percentage Subscriber Satisfaction is greater than 90.00%, no Performance Credit will be due to Subscriber.
 - (b) Where Percentage Subscriber Satisfaction is equal to or less than 90.00%, Subscriber shall be due a Performance Credit in the amount of 1% of the Services Fees (as calculated on a monthly basis for the reporting month) for each full 1% reduction in Percentage Subscriber Satisfaction.

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5) Example Calculation.

- (a) Total Responses for the annual satisfaction survey equal 1,277.
- (b) Total Responses failing the Standard of 100% equal 40.
- (c) Percentage Subscriber Satisfaction is calculated as follows: $((1,277 - 40) / 1,277) * 100 = 96.86\%$.
- (d) The Percentage Subscriber Satisfaction of 96.86% exceeds the threshold of 90.01%; therefore, Subscriber is not due a Performance Credit.

Executed on the dates set forth below by the undersigned authorized representative of Subscriber and Service Provider to be effective as of the Start Date.

[SUBSCRIBER NAME] (SUBSCRIBER)

By: For Reference Only
Name: For Reference Only
Title: For Reference Only
Date: For Reference Only

[SERVICE PROVIDER NAME] (SERVICE PROVIDER)

By: For Reference Only
Name: For Reference Only
Title: For Reference Only
Date: For Reference Only